

KMS TECH, INC., a New York Corporation,

Plaintiff,

-against-

G MISSION, INC., a New York Corporation
d/b/a Karaoke City; JAKE KWAK, an
individual; JOHN DOES 1-10 (being fictitious
name); and ABC CORPS 1-10,
Defendants.

1:20-cv-01041

(Daniels, G.)

AFFIRMATION IN SUPPORT OF MOTION TO WITHDRAW AS COUNSEL

I, Maurice N. Ross, an attorney duly admitted to practice before the Courts of the State of New York and the Southern District of New York, hereby avers as follows:

1. I am a partner at the law firm of Barton, LLP, counsel for Defendants G Mission, Inc., and Jake Kwak (collectively, “Defendants”) in the above-captioned action (the “Action”). I submit this affirmation in support of Barton LLP’s motion to withdraw as counsel.
2. I have attempted to reach out to Jake Kwak, the principal of defendant G Mission, as well as the individual defendant in this case, on numerous occasions since March of 2024. He has not responded to any of my communications. True and correct copies of my most recent emails to Mr. Kwak are annexed as **Exhibit 1** and **Exhibit 2**, respectively. In addition to e-mails, I have repeatedly tried without success to reach Mr., Kwak by telephone.
3. On October 10, 2024, I reached out to Mr. Kwak to discuss Plaintiff KMS Tech Inc.’s (“Plaintiff”) pending motion for sanctions arising from alleged spoliation of evidence of infringement, and more generally, case strategy. Ex. 2. I informed Mr. Kwak that we had to respond to Plaintiff’s motion by Wednesday, October 23, and that “this is a matter of urgency.” Mr. Kwak did not respond. Indeed, his ongoing and frustrating lack of

cooperation made defending Plaintiff's motion for sanctions exceedingly difficult, ultimately necessitating this motion.

4. On November 26, 2024, I again reached out to Mr. Kwak to discuss the above-referenced matter. Specifically, I stated "I have tried to communicate you repeatedly by either email or phone concerning the upcoming December 10 hearing. Further, you have not paid our firm's invoices for months despite my repeated requests by emails and otherwise. Unless our invoices are paid by November 29, and you begin to cooperate for the December 10 hearing concerning alleged wrongful failure to retain software copies, we will inform the court that we must withdraw as your counsel." Ex. 3. Again, Mr. Kwak did not respond.
5. A true and correct copy of the clients' legal invoices since July of 2023, with unpaid fees totaling \$97,929.35, is annexed as **Exhibit 3**.
6. Because Mr. Kwak did not respond, on December 3, 2024, I submitted a letter to this Court informing it of our intentions to make this motion.
7. Our need to withdraw as counsel is particularly frustrating because I believe that Mr. Kwak and G Mission have meritorious defenses to all claims in this action, due to Plaintiff's failure to have obtained necessary music licenses, and that Mr. Kwak and G Mission have clearly meritorious counterclaims relating to such music licenses. Indeed, I continue to believe that if Mr. Kwak and G Mission cooperated with me and my firm in this matter, they would be prevailing parties, entitled to attorneys' fees and costs.
8. Unfortunately, however, for reasons that I do not understand, there has been an utter and complete breakdown of the attorney-client relationship, and I cannot in good conscious or ethically continue to represent these clients.
9. I, therefore, respectfully request that this Court grant our motion to withdraw as counsel.

Dated: New York, New York
December 23, 2024

BARTON LLP

By: /s/ **Maurice N. Ross**
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